

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Donald Santos And United Steel Workers
Of America, AFL-CIO-CLC, On Behalf Of
Themselves And Others Similarly Situated,

Plaintiffs,

v.

Pechiney Plastic Packaging, Inc. (formerly
doing business as American National Can
Company, Pechiney, S.A. and Pechiney
Plastic Packaging, Inc.); Pechiney Plastic
Packaging, Inc. Group Benefit Plan for
Retired Union Employees; and John Does
1 through 20,

Defendants.

Case No. C05-00149 CRB

**ORDER OF PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT**

ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

The parties entered into a proposed Settlement Agreement on March 20, 2006 and requested the Court to give its preliminary approval to that Settlement Agreement, to conditionally certify the Class, and to approve the form and method of providing notice of the proposed settlement to the Class described in the Settlement Agreement.

The Court has reviewed the Settlement Agreement and the referenced Exhibits, including the proposed forms of Class Notice, and finds and concludes as follows:

1 1. The parties' proposed Settlement Agreement seeks conditional certification of the
2 Class as described in the Settlement Agreement under Fed. R. Civ. P. 23(b)(2) for purposes of
3 preliminary approval of the Settlement Agreement and notice of the proposed settlement to the
4 Class, subject to final certification in the Final Judgment.

5 2. The Court has reviewed the pleadings, and the parties' Joint Motion and
6 Memorandum in Support of Joint Motion for Preliminary Approval of Settlement Agreement, and
7 preliminarily finds on a conditional basis for purposes of sending notice to the Class of the
8 proposed Settlement Agreement, and subject to final determination and approval, that all of the
9 requirements of Rule 23(a) are sufficiently met with respect to the Class sought to be certified. In
10 particular, the Court conditionally finds that:

11 a. A Class of approximately about 6,100 Retirees and Surviving Spouses
12 living in several different states is so numerous that joinder of all members is impracticable; there
13 are questions of fact and law common to the Class under the Labor Management Relations Act
14 and the Employee Retirement Income Security Act; the claims of the named Plaintiffs for
15 restoration of Health Care Benefits and damages resulting from the modification by Defendant of
16 its health care benefit plan effective July 1, 2003 are typical of the claims of the Class; and, based
17 on the Settlement Agreement achieved, the Class Representatives have and will fairly and
18 adequately represent the interests of the Class.

19 b. The Court conditionally finds that Class certification is appropriate under
20 Rule 23(b)(2). In particular, Defendants have acted on grounds that are generally applicable to all
21 members of the Class when they modified their health care benefits effective July 1, 2003,
22 thereby making injunctive or declaratory relief appropriate for the Class as a whole.

23 c. William T. Payne, 1007 Mt. Royal Boulevard, Pittsburgh, Pennsylvania
24 15223, and John Stember and Stephen M. Pincus, Stember Feinstein Krakoff, 1705 Allegheny
25 Building, 429 Forbes Avenue, Pittsburgh, Pennsylvania 15219 are appointed as Class Counsel
26 under Rule 23(g). The Court finds that counsel have substantial experience in handling class
27 actions involving claims of the type asserted here; that counsel have a broad knowledge of the
28 applicable law; that counsel have adequately identified and investigated the potential claims in

1 this action; and that counsel have committed and will continue to commit adequate resources to
2 representing the Class.

3 d. This Order is conditioned on the final findings and certification to be made
4 in the Final Judgment.

5 3. The Court has considered the history of this case, the pleadings and the statements
6 by the parties. On a preliminary basis, the Court finds that the Settlement Agreement is fair,
7 reasonable, adequate and in the best interests of the Class. The Court will therefore direct that
8 notice of the Settlement Agreement be provided to the Class pursuant to Fed. R. Civ. P. 23(e)(B).

9 4. The Court has reviewed the Notice of Preliminary Approval of Settlement
10 Agreement and Hearing to be Held to Approve the Proposed Settlement, which is attached to the
11 Settlement Agreement as Exhibit C, and the cover letter from Class Counsel to be sent with the
12 Notice, submitted herewith as Exhibit F, and finds that they comply with the requirements of Fed.
13 R. Civ. P. 23(d) and (e) and fairly present the terms of the Settlement Agreement and the Class
14 Members' rights and responsibilities in the settlement approval process.

15 5. The parties propose that Defendants send the Notice to all identified Class
16 Members by first class mail. The Court finds that such notice is the best notice practicable under
17 the circumstances, and is reasonably calculated to effectuate actual notice of the settlement to the
18 Class.

19 6. The parties have compiled the names and addresses of all known members of the
20 Class. The individual mailing of the Notice to those Class Members identified by the parties
21 provides due and sufficient notice of the proceedings, of the proposed settlement, and of the
22 settlement approval procedure, thus satisfying the requirements of Fed. R. Civ. P. 23 and the
23 requirements of due process.

24 Based upon the foregoing findings of fact and conclusions of law:

25 **IT IS HEREBY ORDERED** that, for purposes of settlement of the litigation under the
26 terms of the Settlement Agreement, the following Class of Retirees and Surviving Spouses is
27 conditionally certified:
28 For purposes of the definition of the Class:

1 a) "Retiree" means an individual who was employed by
 2 PPPI or its predecessors, who was represented by the USW at the
 3 time of his or her retirement, who retired with normal, early or
 4 disability retirement benefits from PPPI or its predecessors, and for
 5 whom PPPI has retained liability for his or her Health Care
 6 Benefits.

7 b) "Surviving Spouse" means a spouse of a Retiree
 8 who has died, and includes spouses of living Retirees who were
 9 Eligible Dependents as of the Effective Date who subsequently
 10 become a Surviving Spouse on the death of a Retiree. Surviving
 11 Spouse status is limited to persons who were the spouse of a Retiree
 12 both on the date of retirement of the Retiree and the date of death of
 13 the Retiree.

14 **IT IS FURTHER ORDERED** that the Settlement Agreement is preliminarily approved.

15 **IT IS FURTHER ORDERED** that all proceedings not related to the approval and
 16 implementation of the Settlement Agreement are stayed until further Order of the Court.

17 **IT IS FURTHER ORDERED** that the Notice of Preliminary Approval of Settlement
 18 Agreement and Hearing to be Held to Approve the Proposed Settlement and the cover letter from
 19 Class Counsel to accompany the Notice are approved by this Court and that the Notice and letter,
 20 together with a copy of the Settlement Agreement and any appropriate Exhibits, be mailed to each
 21 identified Class Member at his or her current last known address by Defendants on or before
 22 April 28, 2006.

23 **IT IS FURTHER ORDERED** that Counsel for Defendants will file an Affidavit of
 24 Mailing with this Court and serve copies of that Affidavit on all counsel prior to the date set for
 25 hearing on the Settlement Agreement.

26 **IT IS FURTHER ORDERED** that on July, 7, 2006, at the hour of 10:00
 27 A.M., in the U.S. District Courthouse, Courtroom 8, 19th Floor, 450 Golden Gate Avenue, San
 28 Francisco, California 94102, the Court will conduct a hearing to finally determine the fairness,
 reasonableness and adequacy of the terms and conditions of the settlement set forth in the
 Settlement Agreement and Exhibits thereto.

IT IS FURTHER ORDERED that any Class Member may appear personally or by
 counsel at the hearing and may object or express his or her view regarding the Settlement
 Agreement and present evidence, briefs, or other papers in support thereof. However, a Class

Member will not be heard, nor be entitled to contest the approval by this Court of the Settlement Agreement, unless on or before June 16, 2006, he or she files with the Clerk of this Court written objections, together with all papers to be submitted to this Court at the Settlement Hearing, and on or before that date serves all such objections and other papers on each of the following: (a) Class Counsel John Stember and Stephen M. Pincus, Stember Feinstein Krakoff, 1705 Allegheny Building, 429 Forbes Avenue, Pittsburgh, Pennsylvania 15219; (b) Defendant's Counsel Richard P. Steinken and Carla J. Rozycki, Jenner & Block LLP, One IBM Plaza, 330 N. Wabash Ave., Chicago, Illinois 60611. Any Class Member who does not file and serve his or her objections in this manner will be deemed to have waived his or her objections and will be forever precluded from making any objections to the fairness or adequacy of the proposed Settlement Agreement. Objections should bear the following heading: Santos, et al. v. Pechiney Plastic Packaging, Inc., Case No. 05 00149, Objections to Proposed Settlement Agreement.

IT IS FURTHER ORDERED that the hearing may be continued or adjourned by order of this Court, from time to time, and without further notice to the Class, except any Class Member who has timely filed an objection.

Dated: April 10, 2006

11070\5001\490228.1

